

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In re )  
 )  
REVIEW OF THE PRIME TIME )  
ACCESS RULE, SECTION 73.658(k) )  
OF THE COMMISSION'S RULES )

MM Docket No. 94-123

TO: The Commission

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**COMMENTS OF THE  
NETWORK AFFILIATED STATIONS ALLIANCE**

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March 7, 1995

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## SUMMARY

The Network Affiliated Stations Alliance ("NASA" or "Affiliates") -- a coalition of the affiliate associations of the ABC, CBS and NBC television networks that represents the more than 650 television broadcast stations that are affiliated with these three networks -- urges the Commission to retain PTAR. PTAR is an important component of an integrated system of network-affiliate rules that preserves the local and diverse character of American broadcasting. The Affiliates agree, however, that the off-network restriction of PTAR should be eliminated.

NASA urges the Commission to maintain the minimally intrusive structural protection of PTAR that enables affiliates to exercise their editorial discretion to program locally one of the four hours of prime time, free of network clearance pressures. This element of PTAR is one of an interlocking web of rules that define the delicate local/national programming partnership that has been the strength of American broadcasting. Altering that balance now would undermine the autonomy of affiliates at a crucial juncture in the development of the broadcasting industry. It would permit the networks to attempt to claim yet another time period as their own, diminishing the amount of broadcast time devoted to local programming decisions to the detriment of the viewing public.

NASA supports the Commission's proposal to repeal PTAR's off-network restriction because that portion of the rule -- which, counterintuitively, applies to three but not four of the major television networks -- skews the now-mature television programming marketplace. The off-network restriction of PTAR is a regulatory device that may have been necessary a quarter-century ago but now has clearly run its course. It should be repealed.

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**COMMENTS OF THE  
NETWORK AFFILIATED STATIONS ALLIANCE**

The Network Affiliated Stations Alliance ("NASA" or "Affiliates"), a coalition of the affiliate associations of the ABC, CBS and NBC Television Networks that represents the more than 650 television broadcast stations that are affiliated with these three networks, strongly supports retention of the prime time access rule ("PTAR"), 47 C.F.R. § 73.658(k) (1993). We also believe, consistent with the Commission's goal of maximizing programming choices for local stations, that the off-network restriction of PTAR should be repealed.

In light of the continuing imbalance in bargaining power between the networks and their affiliates, NASA urges the Commission to retain PTAR. By ensuring that affiliates will be able to exercise their editorial discretion to program locally one of the four hours of prime time, free of network clearance pressures, the rule provides an important safeguard for local station autonomy. This element of PTAR is one of an interlocking web of related rules that define the delicate

local/national programming partnership that has been the strength of American broadcasting. Altering that balance now would undermine the autonomy of affiliates at a crucial juncture in the development of the television industry. It would permit the networks to attempt to claim yet another time period as their own, diminishing the amount of broadcast time devoted to local programming decisions to the clear detriment of the viewing public.

At the same time, NASA also supports the Commission's proposal to repeal the off-network restriction of PTAR.<sup>1/</sup> The off-network restriction -- which, counterintuitively, applies to three but not four of the major television networks -- is no longer necessary to create outlets for program producers. More importantly, the restriction today actually works against its original goal of maximizing programming choices for local stations. It thus should be repealed.

**I. PTAR CONTINUES TO SERVE THE INTERESTS OF AFFILIATES AND LOCAL AUDIENCES IN PROTECTING THE DISCRETION OF LOCAL BROADCASTERS TO MAKE LOCAL PROGRAMMING DECISIONS, AND IT THUS SHOULD BE MAINTAINED.**

PTAR embodies a non-intrusive structural protection that prevents broadcast networks from providing programming for more than three of the four prime-time hours daily, with appropriate exceptions, to serve the important public policy

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<sup>1/</sup> See Review of the Prime Time Access Rule, Section 73.658(k) of the Commission's Rules, Notice of Proposed Rule Making, 9 F.C.C. Rcd. 6358 (1994) (the "Notice").

of encouraging localism and diversity in programming decisions. There can be little question that localism and diversity are core values in American broadcasting. This public policy objective was important when PTAR was adopted, and it remains imperative today.

PTAR was designed to protect the ability of stations to "free a portion of valuable prime time in which licensees of individual stations present programs in light of their own judgments. . . ." <sup>2/</sup> There can be no doubt that the broader television programming market has changed substantially in the quarter-century since PTAR was adopted. But the general market for television programming is not the appropriate locus of analysis for resolving the issue of whether PTAR should be retained or repealed. It is the balance of power between affiliates and their networks -- a balance that defines the ability of broadcasters to act independently and in the interests of their local communities -- that must be analyzed in connection with any proposal to eliminate PTAR altogether. Importantly, the relative balance of power between networks and affiliates has not changed appreciably since PTAR was adopted. <sup>3/</sup> For that reason, PTAR should be retained.

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<sup>2/</sup> 1975 PTAR Order, 50 F.C.C.2d at 835.

<sup>3/</sup> See Comments and Reply Comments of NASA, MM Docket No. 221 (Nov. 21, 1991 and Dec. 19, 1991); Comments and Reply Comments of NASA, MM Docket No. 82-434 (March 23, 1992 and April 7, 1992); Comments of NASA, MMB File Nos. 900418A, 870622A, 920117A (June 14, 1994).

The value of the network-affiliate relationship to the American public derives from its unique ability to maximize the core communications policy values of diversity, localism, and universal availability. This ability, in turn, is critically dependent upon the integrity of the network-affiliate relationship, a relationship which combines the "efficiencies of national production, distribution and selling with a significant decentralization of control over the ultimate service to the public." H. Rep. No. 100-887, 100th Cong., 2d Sess 20 (1988) (emphasis added). The unique national network-local affiliate distribution alliance that forms the centerpiece of the local broadcast system has achieved these core goals to a degree unsurpassed in the world.

As the Commission has noted, the American system of broadcasting, which depends substantially upon the integrity of the network/affiliate relationship, has produced a local television programming system that reflects the diversity of the United States. "[C]onsiderable credit for its existence must go to the framework in which it is broadcast -- a framework formed by the national programming networks . . . [and local stations'] synergy of local and national offerings."<sup>4/</sup> This network-affiliate relationship "is a true

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<sup>4/</sup> Report on Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service, MM Docket No. 89-600, 5 F.C.C. Rcd. 4962, 5037 (1990); see Report and Order On Program Exclusivity, 3 F.C.C. Rcd. 5299, 5311 (1988) ("Our country has made a

partnership serving the interest of both partners and the public interest by combining efficiencies."<sup>5/</sup>

The relationship between these partners -- the affiliate and its network -- is complex and multifaceted. It is a relationship not only of joint venturer but of supplier/customer, but also of competitor in the market for national (and, increasingly, regional) advertising dollars. The principal issues on which the networks and affiliates bargain are affiliations, compensation and clearances.

The Commission has acknowledged from the first days of networking that the balance of power in this relationship rests with the networks but for Commission restraints on network power. While the relative power of local affiliates and the networks varies from market to market, "the individual television station has a greater need, in most instances, for the network affiliation" than the network does for that station.<sup>6/</sup> Although much has changed in the television

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substantial investment in free, local over-the-air service that has and continues substantially to promote the public interest").

<sup>5/</sup> Scrambling of Satellite Television Signals (Report), 2 F.C.C. Rcd. 1669, 62 R.R.2d 687, 732 (1987).

<sup>6/</sup> Report and Order, Docket No. 12746, 21 F.C.C. 697, 713 (1959), aff'd sub nom. Metropolitan Television Co. v. Federal Communications Comm'n, 289 F.2d 874 (D.C. Cir. 1961) (adopting rule barring network representation of affiliates in national advertising sales). A precise assessment of the relative strengths of the affiliates and networks must of necessity be market specific. In those markets with relatively few outlets or where there is a large disparity in the technical facilities among the local stations, the local stations have relatively greater clout. Conversely, where



marketplace, the overwhelming value of an affiliation with a major network has not diminished.

It is important to emphasize that the recent occurrence of a handful of highly visible affiliation switches among Fox and the three older networks has not diminished the overall leverage exercised by the networks over the body of more than 650 affiliated stations. The affiliation switches that occurred in mid- and late 1994 were the result of the ripple effect of a small number of large transaction and were based on a number of highly idiosyncratic factors. These switches, more than anything else, serve to demonstrate the clear emergence of Fox as a fourth major network. The switches do not demonstrate any basic change in the decades-old power imbalance between the networks and the rank-and-file network-affiliated stations, which generally remain subject to network pressures for clearances.<sup>2/</sup> For, it today remains true, particularly in smaller markets, that the economic survival of an affiliated station may well depend on network affiliation, and the networks, through the threat of disaffiliation, exercise considerable control over a large number of their affiliates.

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there are numerous stations and where the facilities of those stations are relatively equal, the networks have relatively greater bargaining leverage.

<sup>2/</sup> And, at any rate, any argument of diminished network power based on affiliation changes in a few markets only in the past few months, given the decades-long history of network attempts to dominate local affiliates, should be viewed with extreme skepticism.

The Commission has responded to the reality of network leverage over affiliated stations with an array of regulations, including PTAR, that mirror the complexity of the underlying relationship. Despite these restraints, there is little question but that in a large number of markets the networks have the upper hand and wield substantial control over their affiliates. Nor have the changes in the television marketplace increased the bargaining leverage of the affiliates. To the contrary, there has been a very significant increase in the supply of stations seeking affiliations over the past 25 years. Concomitantly, the significant increase in cable penetration has substantially reduced the impact of technical disparities among local stations. These dramatic increases in station supply have made the market for network affiliations substantially more competitive.

A fundamental and recurring tension in the network-affiliate relationship is the issue of clearances and preemptions, an issue addressed directly and effectively by PTAR. Networks pressure affiliates to adhere rigidly and unbendingly to the network schedule, which would effectively fill the most-watched parts of the broadcast day with network-provided -- and thus non-local -- programming. The networks initially were so successful in applying such pressure that the Commission adopted a regulation expressly prohibiting the networks from preventing an affiliate from rejecting network

programs which the station finds contrary to the public interest or to substitute a program in its judgment "of greater local or national importance," 47 C.F.R. § 73.658(e), and reserved one hour of prime-time programming in the 50 largest markets to ensure that affiliated stations could not be prevented from programming at least one prime-time hour by network dominance.

The "right to reject" rule is the centerpiece of the Commission's rules protecting the autonomy of network affiliates; it has, however, proven to be difficult to enforce as a practical matter. The issues of preemption, clearance, compensation and affiliation are inextricably intertwined. Affiliates faced with competition for an affiliation or a threat of reduced compensation may well seek to curry the favor of the network by declining to exercise its right to reject network programming, even where no explicit threat is made by the network. Sorting out the reasons for disaffiliation or other punishment can be difficult if not impossible. Affiliates can maintain sufficient autonomy to program to the needs and interests of their local communities only if the Commission's structural regulations permit them to maintain some degree of economic bargaining power in their dealings with their network and continue to reserve, when possible and appropriate, the ability of affiliates to program to the needs of their local audiences.

PTAR has been successful in protecting the ability of network affiliates to program for their communities of license because it reserves a portion of prime-time programming solely for the decisions of the affiliate. It thus is not subject to the definitional and enforcement difficulties inherent in the more subjective and after-the-fact "right to reject" rule (although that rule continues to be crucially important). By fencing off from network programming a single hour of the broadcast day, PTAR reduces the ability of the networks to create yet another daypart that can be dominated by national programming at the expense of local programming decisions. Because of the existence of PTAR, network affiliates are not forced to expend scarce bargaining capital to obtain from the network a component of prime-time programming that is wholly within their control. The maintenance of this element of local control permits affiliates to make local programming decisions, thus benefitting the public in their communities of license.

Some may argue that PTAR's dedication of an hour of prime time to the sole discretion of affiliates has little public interest value because access programming is characterized by syndicated fare rather than locally produced broadcasts. Focusing on the content of the particular programming provided in the access period, however, in

addition to being inappropriate as a regulatory and constitutional matter, misses the essential point that it is local affiliate control over a portion of prime time that is fostered by the rule rather than any particular category of programming. It is the local programming decision that is being protected by PTAR rather than any particular type of programming.<sup>8/</sup> The value of the rule lies in its ability to protect the independence of affiliates to make programming decisions in response to local demand, free of network pressure to clear national programming based on perceived nationwide imperatives.

It should be noted that the very fact that the Affiliates believe that PTAR must be maintained is persuasive evidence of the existence of an imbalance of power in favor of the networks. In a competitive market, buyers typically prefer to have a greater number of sellers able to offer a product. In this case, if the Affiliates did not believe strongly that the networks would utilize the elimination of PTAR's structural protections to undermine affiliates' autonomy, we might well agree that an additional programming

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<sup>8/</sup> The Affiliates' position that the off-network provision of PTAR should be repealed is fully consistent with the Affiliates' overarching commitment to the maintenance of local programming decisions. Elimination of the off-network provision will simply provide affiliates with another choice of programming, and that choice will be informed by the needs of the affiliate's local market.

source -- original network-provided programming -- should compete with local, syndicated and off-network programming for the access period. But the relative bargaining power of affiliates and networks today favors networks to such a degree that the Affiliates cannot responsibly agree with proposals to repeal PTAR.

Without PTAR, there is little doubt that the networks would attempt to create a unified national daypart from the access period. The pressure on affiliates to support a network effort to carve out a new daypart can be immense, as affiliates that resisted the CBS Network's effort to create a unified clearance of late-night programming in the past year can attest. Maintaining PTAR permits at least some prime-time programming decisions to be made locally and in the independent judgment of local broadcasters, a benefit that flows to the public as a whole and is at the root of our system of broadcasting. For this reason, PTAR continues to be an important part of the structure of the network-affiliate relationship, and it should be maintained.

**II. THE OFF-NETWORK RESTRICTION OF PTAR SHOULD BE REPEALED BECAUSE IT HAS OUTLIVED ITS USEFULNESS AND NOW HAS INCREASINGLY PERVERSE EFFECTS ON THE MARKETPLACE FOR TELEVISION PROGRAMMING.**

The off-network restriction of PTAR prevents "commercial television stations owned by or affiliated with a

national television network in the 50 largest television markets" from presenting network programming and "programming formerly on a national network (off-network programs)" for more than three of the four prime-time hours. 47 C.F.R. § 73.658(k) (1993). The purpose of this restriction was to promote "a healthy syndication industry composed of independent producers capable of producing prime time quality programs."<sup>2/</sup>

In the 25 years since PTAR was adopted, the development of the multi-channel television market and the enormous growth in opportunities it has brought to program producers have rendered obsolete the principal purpose behind the rule's off-network restriction. In the multi-channel world of today, the off-network restriction no longer is necessary to ensure outlets for program producers, choices for local licensees, or diversity of programming for viewers. Rather than fulfil its goal of maximizing programming choices for local licensees, the restriction today serves to limit

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<sup>2/</sup> Amendment of Part 73 of the Commission's Rules and Regulation With Respect to Competition and Responsibility in Network Television Broadcasting, Report and Order, 23 F.C.C.2d 382, 386 (1970); see also Consideration of the Operation of, and Possible Changes in, the "Prime Time Access Rule," 44 F.C.C.2d 1081 (1974); Consideration of the Operation of, and Possible Changes in, the "Prime Time Access Rule," Second Report and Order, 50 F.C.C.2d 829 (1975); Consideration of the Operation of, and Possible Changes in, the "Prime Time Access Rule," Third Report and Order, 53 F.C.C.2d 335 (1975).

these choices. The restriction, moreover, causes similarly situated local stations to be regulated in an arbitrarily disparate manner, and it artificially subsidizes a small group of some of television's most powerful producers and station groups.

**A. Continuanace of the Off-Network Restriction  
Frustrates the Rule's Purpose of Maximizing Local  
Licensee Choice.**

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One consequence of the changes of the past 25 years in the marketplace for television programming is that the off-network restriction now actually serves to frustrate the accomplishment of one of the rule's central objectives: namely, the maximization of programming choices for local licensees. From the beginning, the Commission has seen the development of the capabilities of independent program producers not merely as an end in itself but rather as a means to the end of providing local licensees with genuine programming choices so that they can best serve the viewing public. Hence, in its 1970 PTAR decision, the Commission stated:

Our objective is to provide opportunity -- now lacking in television -- for the competitive development of alternate sources of television programs so that television licensees can exercise something more than a nominal choice in selecting the programs which they present to the television audiences in their communities.<sup>10/</sup>

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<sup>10/</sup> 1970 PTAR Order, 23 F.C.C.2d at 397.



In its 1975 decision reaffirming PTAR and the off-network restriction, the Commission likewise stressed the importance of allowing local stations maximum choice in their programming decisions:

[I]t is important to bear in mind the rule's primary objectives: to lessen network dominance and free a portion of valuable prime time in which licensees of individual stations present programs in light of their own judgments as to what would be most responsive to the needs, interests and tastes of their communities.<sup>11/</sup>

Unlike two decades ago, however, the most significant restriction today on the ability of local licensees to choose programming most responsive to their viewers is not the lack of program producers, but the off-network restriction of PTAR. It is ironic that a rule designed for the explicit purpose of fostering greater choice for local stations works to limit that choice.

Not only does the off-network restriction of PTAR limit the ability of local stations to respond to their viewers' preferences, but it also places the affiliates of the three older networks at a competitive disadvantage against the affiliates of Fox and the new networks as well as against independents. One harmful result is that the affiliates of the three older networks, which traditionally have produced the vast majority of local news and public interest pro-

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<sup>11/</sup> 1975 PTAR Order, 50 F.C.C.2d at 835.

gramming, are finding this competitive disadvantage makes it increasingly difficult for them to afford the production of the same level of local programming.

It is important to point out, moreover, that granting the affiliates the right to choose off-network programming for prime time access by no means assures that they will. In fact, a study of television markets 51-100 (which are not subject to the off-network restriction) reveals that the affiliates of CBS, NBC, and ABC were three times as likely to broadcast first-run syndicated programming than off-network programming during the access period.<sup>12/</sup> Fears, therefore, that allowing the affiliates in the top 50 markets to choose off-network programming will cause severe harm to first-run producers find little basis in the realities of the market.

**B.    The Off-Network Restriction of PTAR Treats Similarly Situated Television Licensees in an Arbitrarily Disparate Manner.**

Perhaps the most obvious way in which the changes in the television market have exposed the contradictions of the off-network restriction is the fact that it applies only to

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<sup>12/</sup> The study reveals that the affiliates of the three older networks in markets 51-100 broadcast 157 half-hours of first-run programming against only 49 half-hours of off-network programming during the access period. Comments of the Coalition to Enhance Diversity, filed June 14, 1994, MM File Nos. 870622A, 900418A, 920117A.

the affiliates of CBS, NBC, and ABC but not to the affiliates of the Fox Network. The policy, in effect, serves to regulate similarly situated local licensees in an arbitrarily disparate fashion. Few in the industry would dispute that Fox, by every measure, is truly a fourth network -- except, of course, by the measure used under PTAR. Mindful of the great advantage of not being subject to the off-network restriction, Fox has consciously remained right at the ceiling of fifteen hours of prime-time programming a week established by PTAR. One result is that the programming choices of Fox and its affiliates are dictated not solely as they should be by market demand and viewer choice -- but also by the need to remain below the PTAR-imposed 15-hour a week ceiling. It is likely that the off-network restriction, if it remains in effect, will cause the two new networks to make similar regulation-based, as opposed to consumer-based, choices.

The sweeping shifts in station affiliation that have occurred during the last year demonstrate both Fox's status as a full-fledged network as well as the arbitrariness of the off-network restriction. By switching their affiliation to Fox, local licensees became instantly free to program as they choose during the access period. Stations in the top 50 markets that switched affiliations to CBS, NBC, or ABC, on the other hand, equally as suddenly were banned from broadcasting

off-network programming during that time -- no matter their ratings, revenues, or position on the dial. There seems little policy justification for regulating key decisions of local licensees solely on the basis of the network to which they are affiliated, without any regard to the particular characteristics of the local licensee in question. The affiliate switches have served only to highlight the lack of logic inherent in such a policy.

**C.    The Off-Network Restriction Serves Mainly to Subsidize a Small Group of Powerful Programming Companies and Station Groups.**

Given the number and range of opportunities open to program producers in today's multi-channel world, it is clear that the off-network restriction no longer serves any valid opportunity-creating purpose. Indeed, this fact was recognized as early as 1980 by the Network Inquiry Special Staff, which found:

[T]he rule does nothing to increase the number of outlets or viewing options available to the public and thus could not be expected to affect competition or diversity in a manner that would increase viewer satisfaction.<sup>13/</sup>

The rule, rather, serves as an outright subsidy to two groups: (1) the three first-run production giants that have a captive market in the affiliates covered by the off-

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<sup>13/</sup>    Network Inquiry Special Staff, New Television Networks: Entry, Jurisdiction, Ownership and Regulation 510 (1980).

network restriction; and (2) the most powerful "independent" stations in these top fifty markets (almost all of which are either affiliated with Fox or the two new networks or owned by a major national station group).

Programming studies demonstrate that restricting the affiliates of the three older networks from broadcasting off-network programming during the access period has not led to the development of diverse or locally oriented programming.<sup>14/</sup> Rather, over 90 percent of the syndicated programming broadcast by the affiliates during that hour is produced by only three companies (King World, Fox, and Paramount) and consists mainly of a handful of popular game shows and "reality" programs.<sup>15/</sup>

The cost of this subsidy to the three first-run production giants has fallen largely on producers of high-cost, high-quality network programming. These producers rely on after-market syndication in order to turn a profit on their high-cost programming, yet the off-network restriction artificially lowers the prices of their syndication by restricting the number of potential buyers. Exacerbating the problem is the recent surge in off-Fox syndicated programming

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<sup>14/</sup> Comments of Coalition to Enhance Diversity, supra note 12.

<sup>15/</sup> Id.

(such as The Simpsons), which has deepened the imbalance between supply and demand for off-network programming.

This is not to argue that the Commission should devise policies to favor high-cost, high-quality network programming over game and "reality" shows, for, as the Association of Independent Television Stations has argued, the Commission ought to keep "program tastes and quality out of the equation".<sup>16/</sup> Yet, it seems equally indefensible for the Commission to continue a policy that in practice works to subsidize the production of game and "reality" shows and to depress artificially the revenues available to high-quality network productions.

Just as the rule on the production side has served to benefit a narrow group of powerful production companies, so, on the broadcast side, the lion's share of the benefits have been enjoyed by powerful station groups. The local stations that benefit from the rule (by being able to purchase off-network programs more cheaply and broadcast them during the important access period) are not marginal, small-time independent stations. As a practical matter, small-market independents receive no benefit from PTAR since the rule only applies to the top 50 markets. And, in those top 50 markets,

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<sup>16/</sup> Comments of the Association of Independent Television Stations, filed June 14, 1994, MM File Nos. 870622A, 900418A, 920117A.

the greatest benefit accrues to the well-financed stations that are able to purchase the most popular off-network programming. To a very large extent, these stations are either Fox affiliates (benefitting from Fox's PTAR exemption), affiliates of the two new networks, or owned by a major national station group such as Tribune.

**D.    The Off-Network Restriction is No Longer Necessary To Create Opportunities for Program Producers or Diversity of Programming for Viewers.**

The extraordinary changes that have taken place in television in the 25 years since the PTAR was issued by the Commission have been detailed in great length in several proceedings. It is not the purpose of this submission to re-chronicle these changes. Nevertheless, in reexamining the off-network restriction 25 years after its adoption, the Commission ought to give due regard to the fact that today we are no longer operating in the three-channel universe of 1970 but in a multi-channel universe populated by scores of outlets for independently produced television programming.

PTAR was devised for a world in which the only outlets for programming generally were limited to three networks and their affiliates. A significant rationale for the Commission's decision to adopt the off-network restriction was its fear that the market for independently produced programming in the three-channel universe of 1970 was too

small to sustain viable competition to the networks. For, as the Commission noted in its ruling, 499 of the 621 stations across the country at that time were affiliated with one of the three networks, and the networks controlled over 90 percent of the prime time viewing audience.<sup>17/</sup> Under such conditions, the Commission feared for the "virtual disappearance of high-cost, prime-time, syndicated programming", and it stressed that "[a] healthy syndication industry composed of independent producers capable of producing prime time quality programs must have an adequate base of television stations to use its product".<sup>18/</sup>

In 1995, by contrast, independent producers enjoy an extraordinary array of sources to which they can sell their programming. The exponential growth in cable programming has presented producers with great opportunities.<sup>19/</sup> Given the

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<sup>17/</sup> 1970 PTAR Order, 23 F.C.C.2d at 385.

<sup>18/</sup> Id. at 385, 386.

<sup>19/</sup> Only last month, Broadcasting & Cable magazine presented a special report on this growth in original cable programming, which stated:

The lineup of original cable programming is multiplying rapidly as several new networks join the already long list of established services. In the last year alone, 10 new networks have joined Broadcasting & Cable's directory of original programming. . . . Many of the new networks are programming full lineups of original shows as they look to distinguish themselves in the increasingly crowded universe. Meanwhile the mature cable



present realities, the Commission must be satisfied that the syndication industry now has "an adequate base" of outlets for its product. Nor does it seem possible to argue that a change as modest as the repeal of the off-network restriction will seriously erode this base. Indeed, the exponential growth of programming outlets has created a situation in which the "diversity of programs and development of diverse and antagonistic sources of programming service" has reached a level that would have been unimaginable to the Commission of 1970.<sup>20/</sup> Accordingly, the off-network restriction of PTAR may be eliminated.

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networks continue to pump more and more dollars into their original programming....Original programming efforts by cable this year appear likely to surpass last year's spending, which, according to the National Cable Television Association, accounted for an estimated \$2.4 billion on the basic cable networks and about \$1.4 billion on the pay TV services.

Broadcasting & Cable, Feb. 20, 1995, p. 22. King World, for one, has argued that "the economics of first-run syndicated programming and cable networks" are not "remotely comparable". Even if true as a general proposition, this argument when made in the context of PTAR misses the point that the purpose of the off-network restriction was to create a wide range of opportunities for programmers outside of "the three-network funnel" -- such as those offered today by cable -- and not just to create special advantages for the narrow range of programming that dominates the syndicated first-run market. See Comments of King World Productions, Inc., filed June 14, 1994, MM File Nos. 870622A, 900418A, 920117A; see also 1975 PTAR Order, 50 F.C.C.2d at 835.

<sup>20/</sup> 1970 PTAR Order, 23 F.C.C.2d at 400.